

Kluwer Patent Blog

A new European patent landscape (2): scope of the Unitary Patent system

Kluwer Patent blogger · Tuesday, February 7th, 2023

In June 2023 the European patent landscape will see one of the most dramatic changes in decades with the introduction of the Unitary Patent (UP) and the opening of Unified Patent Court (UPC). In a short series this blog will go through the main characteristics of the system and decisions that need to be made to get ready and to protect inventions, both new and existing. Part two: scope of the Unitary Patent system.

Whereas the European patent can cover up to 39 member states of the European Patent Convention (EPC), the Unitary Patent system is only open to EU member states (although there was some discussion about this in the period after the Brexit referendum, when the UK initially had plans to stay in the UP system).

The UPC Agreement (UPCA) has been signed by 25 EU member states, but so far only 17 have ratified the Agreement (or, in the case of Germany, will do this in February and thereby launching the UP system): Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Portugal, Slovenia and Sweden.

It means that at its start the Unitary Patent will cover these 17 member states only. And that, in many cases, patent proprietors will want to extend protection of their inventions to other states – Spain, Turkey, Switzerland and/or the United Kingdom for instance – with traditional European or national patents.

At its start the Unitary Patent system will cover 17 member states

If more member states ratify the UPCA in upcoming years, the scope of existing Unitary Patents will not be extended to those countries.

A Unitary Patent may be licensed for the whole or part of the territories of the UP member states.

The fact that the Unitary Patent will automatically cover all member states was one of the reasons for Poland not to join. It was concerned it would harm the economy if its territory was flooded by Unitary Patents from businesses all over the world.

In Ireland a referendum has to be held before parliament can ratify the Unified Patent Court

Agreement. This referendum will take place this year or in 2024.

Applying for Unitary Patent protection

The application procedure for a Unitary Patent is the same as with a traditional European patent. The difference is post-grant: the patent proprietor must submit a 'request for unitary effect' to the EPO, no later than one month after the date of publication of the mention of the grant in the European Patent Bulletin. The request shall preferably be filed online and is free of charge.

The EPO will register the unitary effect in the Register for Unitary Patent protection, and inform the requester of the date of registration. If the request has been filed beyond the one-month deadline, no extension is available.

Since the start of 2023 transitional measures for patent applications apply:

Firstly, applicants will be able to file early requests for unitary effect already before the full start of the UP system.

Secondly, the applicant can request to delay the grant of a European patent in the final phase of the procedure. In this way it can be avoided that applicants miss the opportunity to obtain a Unitary Patent in the transitional phase.

The forms to apply for one of these transitional measures are [available here](#).

In case of co-ownership of a patent, the nationality of the first applicant will decide what national law is applicable

The Register for Unitary Patent Protection will be part of the European Patent Register and will register any limitation, licence, transfer, revocation or lapse of a European patent with unitary effect, the participating Member States in which the patent has effect, the date of filing – and, if applicable, the date of any withdrawal – of a statement on licences of rights.

The Register will also contain data as to the payment of the renewal fees and information on decisions of the Unified Patent Court.

Influence of national law

A traditional European patent is essentially a bundle of national patents, enforceable before national courts according to different national legislations and procedures. This is different in the case of the Unitary Patent. Substantive patent law governing the scope and limitations of patent rights and available remedies in case of infringements have been harmonised in the UPCA. However, national patent law is still of influence, as article 7(1) Regulation 1257/2012 clarifies:

‘A European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect and in which, according to the European Patent Register:

- (a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or
- (b) where point (a) does not apply, the applicant had a place of business on the date of filing of the

application for the European patent.’

If no applicant has his residence, principal place of business or place of business in a contracting member state, German law applies. In case of co-ownership of a patent, the nationality of the first applicant will decide what national law is applicable. This is important for issues such as entitlement, employee invention disputes, mortgaging, assignments, licences and the rights of co-owners. National laws differ significantly on these topics.

Part one in this series: [the bumpy road to the Unitary Patent system](#)

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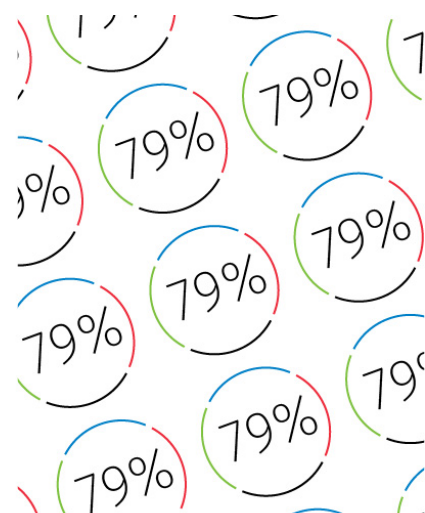
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